

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID R. LOCKARD,)	
)	
Plaintiff,)	
)	
v.)	1:17CV358
)	
NANCY A. BERRYHILL,)	
Acting Commissioner of Social)	
Security,)	
)	
Defendant.)	

ORDER

This matter is before this court for review of the Recommendation filed on June 8, 2018, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 13.) In the Recommendation, the Magistrate Judge recommends that Plaintiff's Motion for Judgment (Doc. 9) be denied, that Defendant's Motion for Judgment on the Pleadings (Doc. 11) be granted, and that the final decision of the Commissioner be upheld. The Recommendation was served on the parties to this action on June 8, 2018. (Doc. 14.) Counsel for Plaintiff filed timely objections (Doc. 15) to the Recommendation. Defendant's counsel filed a response (Doc. 16) to Plaintiff's objections.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified

proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

Plaintiff's objections have no merit. The only objection warranting specific discussion is Plaintiff's contention that the Administrative Law Judge's ("ALJ") step five finding that Plaintiff can work in positions such as a photo splicer and marker/labeler is not supported by substantial evidence. (Doc. 15 at 11.) Even if the splicer position were obsolete by the advancement of digital technology as Plaintiff contends (id.), there are still enough (192,000) marker/labeler positions available to constitute substantial evidence in support of the ALJ's step five determination. (Tr. 35, 110-111.)¹ See, e.g., Hicks v. Califano, 600 F.2d 1048, 1051 n.2 (4th Cir. 1979) (110 jobs constitute a significant number). Any error here is harmless. Plaintiff also purports to identify an apparent conflict between the marker/labeler position and the Occupational Outlook Handbook description of that position (Doc.

¹ Transcript citations refer to the Administrative Transcript of Record filed manually with the Commissioner's Answer. (Doc. 7.)

15 at 10); however, an ALJ is not required to address apparent conflicts between a vocational expert's testimony and the Occupational Outlook Handbook. See, e.g., Poe v. Comm'r of Soc. Sec., 342 F. App'x 149, 158 (6th Cir. 2009) (unpublished); Street v. Berryhill, Docket No. 1:17-cv-00204-FDW, 2018 WL 1935866, at *6 (W.D.N.C. Apr. 24, 2018) (unpublished); Gandara v. Berryhill, No. 2:16-cv-01191 AC, 2017 WL 4181091, at *4 (E.D. Cal. Sept. 20, 2017) (unpublished); Baldwin v. Comm'r of Soc. Sec., Case No. 3:13-cv-389, 2015 WL 4540436, at *5 (S.D. Ohio Feb. 24, 2015) (unpublished).

In sum, this court has appropriately reviewed the portions of the Recommendation to which objections were made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation (Doc. 13) is **ADOPTED**. **IT IS FURTHER ORDERED** that Plaintiff's Motion for Judgment Reversing or Modifying the Decision of the Commissioner of Social Security, or Remanding the Cause for a Rehearing (Doc. 9) is **DENIED**, that Defendant's Motion for Judgment on the Pleadings (Doc. 11) is **GRANTED**, that the Commissioner's decision is **AFFIRMED**, and that this action is dismissed with prejudice.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 25th day of July, 2018.


United States District Judge